

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Joe Anthony Ortega  
13502 Carriage Road  
Poway, CA 92064

Registered Nurse License No. 550217

Respondent

Case No. 2007-151

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on December 20, 2007.

IT IS SO ORDERED November 20, 2007.



President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 MARGARET ANN LAFKO  
Supervising Deputy Attorney General  
3 RITA M. LANE, State Bar No. 171352  
Deputy Attorney General  
4 California Department of Justice  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101

6 P.O. Box 85266  
San Diego, CA 92186-5266  
7 Telephone: (619) 645-2614  
Facsimile: (619) 645-2061  
8

9 Attorneys for Complainant

10 **BEFORE THE**  
11 **BOARD OF REGISTERED NURSING**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 JOE ANTHONY ORTEGA  
13502 Carriage Road  
15 Poway, CA 92064

16 Registered Nurse License No. 550217

17 Respondent.  
18

Case No. 2007-151

OAH No. L-2007020366

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
20 above-entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H, R.N (Complainant) is the Executive Officer of  
23 the Board of Registered Nursing. She brought this action solely in her official capacity and is  
24 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,  
25 by Rita M. Lane, Deputy Attorney General.

26 2. Respondent Joe Anthony Ortega is represented in this proceeding by  
27 attorney Howard E. King, Jr., whose address is 9845 Erma Road, Suite 201, San Diego, CA  
28 92131.

3. On or about December 1, 1998, the Board of Registered Nursing issued Registered Nurse License No. 550217 to Joe Anthony Ortega (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2007-151 and will expire on January 31, 2009, unless renewed.

## JURISDICTION

4. Accusation No. 2007-151 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 12, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2007-151 is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, discussed with counsel, and fully understands the charges and allegations in Accusation No. 2007-151. Respondent has also carefully read, discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2007-151.

9. Respondent agrees that his Registered Nurse License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

## CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

## OTHER MATTERS

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

## DISCIPLINARY ORDER

In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

IT IS HEREBY ORDERED that Registered Nurse License No. 550217 issued to Respondent Joe Anthony Ortega is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

**Severability Clause.** Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared

///

unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

**Criminal Court Orders:** If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

3. **Report in Person.** Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of

///

1 residency or practice outside the state, and within 30 days prior to re-establishing residency or  
2 returning to practice in this state.

3 Respondent shall provide a list of all states and territories where he has ever been  
4 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further  
5 provide information regarding the status of each license and any changes in such license status  
6 during the term of probation. Respondent shall inform the Board if he applies for or obtains a  
7 new nursing license during the term of probation.

8 5. **Submit Written Reports.** Respondent, during the period of probation,  
9 shall submit or cause to be submitted such written reports/declarations and verification of actions  
10 under penalty of perjury, as required by the Board. These reports/declarations shall contain  
11 statements relative to Respondent's compliance with all the conditions of the Board's Probation  
12 Program. Respondent shall immediately execute all release of information forms as may be  
13 required by the Board or its representatives.

14 Respondent shall provide a copy of this Decision to the nursing regulatory agency  
15 in every state and territory in which he has a registered nurse license.

16 6. **Function as a Registered Nurse.** Respondent, during the period of  
17 probation, shall engage in the practice of registered nursing in California for a minimum of 24  
18 hours per week for 6 consecutive months or as determined by the Board.

19 For purposes of compliance with the section, "engage in the practice of registered  
20 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or  
21 work in any non-direct patient care position that requires licensure as a registered nurse.

22 The Board may require that advanced practice nurses engage in advanced practice  
23 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the  
24 Board.

25 If Respondent has not complied with this condition during the probationary term,  
26 and Respondent has presented sufficient documentation of his good faith efforts to comply with  
27 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
28 grant an extension of Respondent's probation period up to one year without further hearing in

1 order to comply with this condition. During the one year extension, all original conditions of  
2 probation shall apply.

3           **7. Employment Approval and Reporting Requirements.** Respondent  
4 shall obtain prior approval from the Board before commencing or continuing any employment,  
5 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
6 performance evaluations and other employment related reports as a registered nurse upon request  
7 of the Board.

8           Respondent shall provide a copy of this Decision to his employer and immediate  
9 supervisors prior to commencement of any nursing or other health care related employment.

10           In addition to the above, Respondent shall notify the Board in writing within  
11 seventy-two (72) hours after he obtains any nursing or other health care related employment.  
12 Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated  
13 or separated, regardless of cause, from any nursing, or other health care related employment with  
14 a full explanation of the circumstances surrounding the termination or separation.

15           **8. Supervision.** Respondent shall obtain prior approval from the Board  
16 regarding Respondent's level of supervision and/or collaboration before commencing or  
17 continuing any employment as a registered nurse, or education and training that includes patient  
18 care.

19           Respondent shall practice only under the direct supervision of a registered nurse  
20 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative  
21 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)  
22 are approved.

23           Respondent's level of supervision and/or collaboration may include, but is not  
24 limited to the following:

25           (a) Maximum - The individual providing supervision and/or collaboration is  
26 present in the patient care area or in any other work setting at all times.

27           (b) Moderate - The individual providing supervision and/or collaboration is in  
28 the patient care unit or in any other work setting at least half the hours Respondent works.

1 (c) Minimum - The individual providing supervision and/or collaboration has  
2 person-to-person communication with Respondent at least twice during each shift worked.

3 (d) Home Health Care - If Respondent is approved to work in the home health  
4 care setting, the individual providing supervision and/or collaboration shall have person-to-  
5 person communication with Respondent as required by the Board each work day. Respondent  
6 shall maintain telephone or other telecommunication contact with the individual providing  
7 supervision and/or collaboration as required by the Board during each work day. The individual  
8 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-  
9 site visits to patients' homes visited by Respondent with or without Respondent present.

10 9. **Employment Limitations.** Respondent shall not work for a nurse's  
11 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a  
12 traveling nurse, or for an in-house nursing pool.

13 Respondent shall not work for a licensed home health agency as a visiting nurse  
14 unless the registered nursing supervision and other protections for home visits have been  
15 approved by the Board. Respondent shall not work in any other registered nursing occupation  
16 where home visits are required.

17 Respondent shall not work in any health care setting as a supervisor of registered  
18 nurses. The Board may additionally restrict Respondent from supervising licensed vocational  
19 nurses and/or unlicensed assistive personnel on a case-by-case basis.

20 Respondent shall not work as a faculty member in an approved school of nursing  
21 or as an instructor in a Board approved continuing education program.

22 Respondent shall work only on a regularly assigned, identified and predetermined  
23 worksite(s) and shall not work in a float capacity.

24 If Respondent is working or intends to work in excess of 40 hours per week, the  
25 Board may request documentation to determine whether there should be restrictions on the hours  
26 of work.

27 ///

28 ///

1                   10.     **Complete a Nursing Course(s).** Respondent, at his own expense, shall  
2 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later  
3 than six months prior to the end of his probationary term.

4                   Respondent shall obtain prior approval from the Board before enrolling in the  
5 course(s). Respondent shall submit to the Board the original transcripts or certificates of  
6 completion for the above required course(s). The Board shall return the original documents to  
7 Respondent after photocopying them for its records.

8                   11.     **Cost Recovery.** Respondent shall pay to the Board costs associated with  
9 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the  
10 amount of \$7,135.50. Respondent shall be permitted to pay these costs in a payment plan  
11 approved by the Board, with payments to be completed no later than three months prior to the  
12 end of the probation term.

13                   If Respondent has not complied with this condition during the probationary term,  
14 and Respondent has presented sufficient documentation of his good faith efforts to comply with  
15 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
16 grant an extension of Respondent's probation period up to one year without further hearing in  
17 order to comply with this condition. During the one year extension, all original conditions of  
18 probation will apply.

19                   12.     **Violation of Probation.** If Respondent violates the conditions of his  
20 probation, the Board after giving Respondent notice and an opportunity to be heard, may set  
21 aside the stay order and impose the stayed discipline (revocation) of Respondent's license.

22                   If during the period of probation, an accusation or petition to revoke probation has  
23 been filed against Respondent's license or the Attorney General's Office has been requested to  
24 prepare an accusation or petition to revoke probation against Respondent's license, the  
25 probationary period shall automatically be extended and shall not expire until the accusation or  
26 petition has been acted upon by the Board.

27                   13.     **License Surrender.** During Respondent's term of probation, if he ceases  
28 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of

1 probation, Respondent may surrender his license to the Board. The Board reserves the right to  
2 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to  
3 take any other action deemed appropriate and reasonable under the circumstances, without  
4 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent  
5 will no longer be subject to the conditions of probation.

6 Surrender of Respondent's license shall be considered a disciplinary action and  
7 shall become a part of Respondent's license history with the Board. A registered nurse whose  
8 license has been surrendered may petition the Board for reinstatement no sooner than the  
9 following minimum periods from the effective date of the disciplinary decision:

10 (1) Two years for reinstatement of a license that was surrendered for any  
11 reason other than a mental or physical illness; or

12 (2) One year for a license surrendered for a mental or physical illness.

13 **14. Mental Health Examination; Treatment; Therapy and Counseling.**

14 The respondent shall, within 45 days of the effective date of this decision, undergo one or more  
15 psychological, neuropsychological, psychiatric or other mental health examinations. Each  
16 examination shall be conducted by a licensed mental health professional approved by the Board.  
17 The type of mental health professional (examiner) and speciality of examiner shall be determined  
18 by the board. An examiner may not have prior, current, or pending discipline with his or her  
19 licensing board or agency. All costs for examinations are the responsibility of the Respondent.

20 Respondent shall sign a release of information form to allow each examiner to  
21 communicate written and verbal information to the Board. The release shall also permit each  
22 examiner to review any prior mental health examination(s) and other documentation determined  
23 by the Board to be helpful. Respondent shall provide a copy of this *Decision and Order*, and of  
24 any pleading referenced in the *Decision and Order*, to each examiner prior to the examination.

25 Respondent shall ensure that each examiner submit a written report to the Board  
26 within thirty (30) calendar days after completion of each examination. Each report shall include  
27 a written assessment of the Respondent's ability to practice safely as a registered nurse, including  
28 as a registered nurse with advanced practice responsibilities, if so credentialed, and must include

1 a history and physical, relevant laboratory data, and psychometric testing, if indicated. If the  
2 Respondent is determined to be unsafe to practice, the report shall state this conclusively, and  
3 this shall be grounds to revoke, suspend, or otherwise inactivate a registered nurse's license,  
4 and/or advanced practice certificate.

### 5 **Treatment, Therapy and Counseling Recommendations**

6 Each mental health report submitted by the examiner shall include  
7 recommendations for Respondent to undergo treatment, therapy and counseling by a licensed  
8 treatment professional(s). Within seven (7) calendar days of notification of such a  
9 recommendation, Respondent shall provide the board the name and qualifications of each  
10 selected treatment professional. The treatment professional shall have prior approval by the  
11 Board, and shall have no prior, current, or pending discipline with his or her licensing board or  
12 agency. All costs for treatment, therapy and counseling are the responsibility of the Respondent.

13 Respondent shall sign a release of information form to allow each treatment  
14 professional to communicate written and verbal information to the Board. The release shall also  
15 permit each treatment professional to review any prior mental health examination(s), report(s)  
16 from treatment professionals, and other documentation determined by the Board to be helpful.  
17 Respondent shall provide a copy of this Decision and Order, and of any pleading referenced in  
18 the Decision and Order, to each treatment professional.

19 Respondent shall ensure that each treatment professional submit a written report  
20 to the Board within thirty (30) calendar days of the treatment appointments. The frequency of the  
21 appointments shall be no more than weekly and no less than every three months. All treatment  
22 reports shall include, but not limited to, Respondent's diagnosis, prognosis, any prescribed  
23 medication, and recommendations for on-going treatment. Respondent shall undergo and  
24 continue treatment by each treatment professional until the treatment professional determines that  
25 treatment is no longer considered necessary. Any determination that treatment is no longer  
26 necessary shall be stated in writing to the Board.

27 ///

28 ///

1           If the Respondent is determined to be unsafe to practice, the treatment  
2 professional report shall state this conclusively, and this shall be grounds to revoke, suspend, or  
3 otherwise inactivate a registered nurse's license, and/or advanced practice certificate.

4           **Respondent Unsafe to Practice or Has Adverse Change in Mental Status-**  
5 **Board Action Taken**

6           The Board reserves the right to amend this Decision and Order based on the  
7 examination results or the treatment professional's recommendations. If the examiner or the  
8 treatment professional conclude that Respondent is unable to practice safely as a registered nurse  
9 or as an advanced practice nurse, or that Respondent has had an adverse change in mental status  
10 resulting in the inability to practice safely as a registered nurse or as an advanced practice nurse,  
11 the examiner or treatment professional shall immediately notify the Board and Respondent by  
12 telephone. The need to have treatment appointments in excess of once per week shall be deemed  
13 to be an adverse change in mental status. If Respondent is unsafe to practice or has an adverse  
14 change in mental status, the Board shall notify Respondent in writing to immediately cease  
15 practice, and Respondent shall not resume practice until and unless notified by the Board in  
16 writing.

17           Following notification by the examiner or treatment professional that the  
18 Respondent is unable or unsafe to practice, the Board shall request that the Attorney General's  
19 Office prepare an accusation and/or petition to revoke probation. The filing of an accusation  
20 and/or petition to revoke probation shall automatically invoke an actual disciplinary suspension  
21 from practice that shall constitute a public record. During the time of the suspension, all  
22 conditions of probation shall continue in force except for actual practice as a registered nurse.  
23 The suspension shall not apply to the reduction of the probationary time period. Such suspension  
24 shall stay in effect until the final disposition of the filed accusation and/or petition to revoke  
25 probation.

26           **Respondent Fails to Complete Exam or Attend Treatment Appointments**

27           If Respondent fails to complete the mental health examination(s) during the  
28 specified time period, or fails to attend treatment appointments, Respondent shall provide to the

1 Board documentary mitigation evidence demonstrating a good faith effort to have the  
2 examination(s) or treatment(s) during the specified time period. If adequate documentary  
3 evidence is received, the Board may, in its discretion, determine that Respondent has not violated  
4 the probation conditions.

5 If Respondent does not provide adequate mitigation evidence demonstrating a  
6 good faith effort to have the examination(s) or treatment(s) during the specified time period, the  
7 Respondent shall be deemed to be unsafe to practice. The Board shall notify Respondent in  
8 writing to immediately cease practice, and Respondent shall not resume practice until and unless  
9 notified by the Board in writing. Following notification of the Respondent, the same disciplinary  
10 procedures as specified above shall be in force.

11 ACCEPTANCE

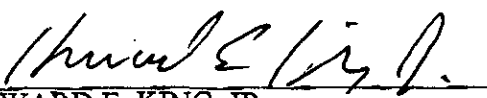
12 I have carefully read the above Stipulated Settlement and Disciplinary Order and  
13 have fully discussed it with my attorney, Howard E. King, Jr. I understand the stipulation and the  
14 effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and  
15 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
16 Decision and Order of the Board of Registered Nursing.

17 DATED: 5/4/07

18  
19   
20 JOE ANTHONY ORTEGA  
21 Respondent

22 I have read and fully discussed with Respondent Joe Anthony Ortega the terms  
23 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
24 Order. I approve its form and content.

25 DATED: 5-4-07

26  
27   
28 HOWARD E. KING, JR.  
Attorney for Respondent

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

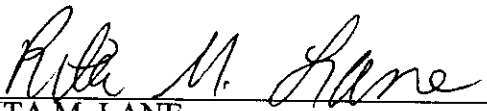
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 5-11-07

EDMUND G. BROWN JR., Attorney General  
of the State of California

MARGARET ANN LAFKO  
Supervising Deputy Attorney General

  
\_\_\_\_\_  
RITA M. LANE  
Deputy Attorney General

Attorneys for Complainant

**Exhibit A**  
**Accusation No. 2007-151**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 MARGARET A. LAFKO  
Supervising Deputy Attorney General  
3 RITA M. LANE, State Bar No. 171352  
Deputy Attorney General  
4 California Department of Justice  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101

6 P.O. Box 85266  
San Diego, CA 92186-5266  
7 Telephone: (619) 645-2614  
Facsimile: (619) 645-2061

8 Attorneys for Complainant  
9

10 **BEFORE THE**  
11 **BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 2007-151

14 JOE ANTHONY ORTEGA  
13502 Carriage Road  
15 Poway, CA 92064

**A C C U S A T I O N**

16 Registered Nurse License No. 550217

17 Respondent.  
18  
19

20 Ruth Ann Terry, M.P.H., R.N. (Complainant) alleges:

21 PARTIES

22 1. Complainant brings this Accusation solely in her official capacity as the  
23 Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

24 2. On or about December 1, 1998, the Board of Registered Nursing issued  
25 Registered Nurse License Number 550217 to JOE ANTHONY ORTEGA (Respondent). The  
26 license will expire on January 31, 2007, unless renewed.

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

## STATUTORY PROVISIONS

5. Code section 125.3 provides, in pertinent part, that the Board, Registrar or Director may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

8. Code section 726 states:

The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

9. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

10. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

. . . .

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

11. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

13. California Code of Regulations, title 16, section 1445(b), states:

When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and he/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offenses(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

#### FIRST CAUSE FOR DISCIPLINE

##### (Unprofessional Conduct-Conviction of a Crime)

14. Respondent is subject to disciplinary action for unprofessional conduct under Code section 2761(a) and (f) in that Respondent was convicted of the crime of false imprisonment, a crime substantially related to the qualifications, functions and duties of a registered nurse. The circumstances are as follows:

15. On or about July 19, 2005, in the San Diego Superior Court, in proceedings entitled *People of the State of California v. Joe Anthony Ortega*, Case No. CD187558, Respondent was convicted by the court on his plea of no contest to a violation of Penal Code section 236/237 (False Imprisonment). The remaining four counts of Rape by Foreign Object-Use of Force (Penal Code section 289(a)) against Respondent were dismissed.

a. As a result of the conviction, on or about July 19, 2004, Respondent was sentenced and remanded to the custody of the sheriff for 1 day and then placed on formal probation for 3 years, to expire on July 18, 2008; ordered to perform 200 hours of community service; ordered to provide a DNA sample; ordered to pay a fine of \$239.00 and to pay a restitution fine of \$200.00; and ordered to pay restitution to the victim in an amount to be determined.

b. The circumstances of the crime are as follows: On or about January 21, 2004, while Respondent was working in the Kaiser Zion emergency room, he digitally penetrated patient C.V.'s vagina on at least three occasions and touched patient C.V.'s breasts.

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7

2

3  
4  
5  
6  
7

## 8

9

10  
11  
12

## 13

14

15  
16  
17  
18

## 19

20  
21

22  
23

24  
25  
26

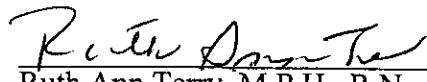
27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. Taking such other and further action as deemed necessary and proper.

DATED: 11/30/06

  
Ruth Ann Terry, M.P.H., R.N.  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

SD2006802103

80102538.wpd

43:21A 8-010205